

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

NEXTGEAR CAPITAL, INC., )  
v. )  
Plaintiff, ) ) Case No. 18-cv-01086-NCC  
BANK OF SPRINGFIELD, ) )  
Defendant. ) )

**MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

COMES NOW Plaintiff NextGear Capital, Inc. (“NextGear”), by and through its undersigned attorneys, and for its Motion for Leave to File its Second Amended Complaint against Defendant Bank of Springfield (“BOS”), states as follows:

1. Fed. R. Civ. P. 15(a)(1) provides that “[a] party may amend its pleading once as a matter of course ... before being served with a responsive pleading...”
2. Defendant Bank of Springfield filed its Motion to Dismiss on November 6, 2018. A motion to dismiss is not a responsive pleading for the purposes of Rule 15(a). *Winfrey v. Brewer*, 570 F.2d 761, 764 n.4 (8<sup>th</sup> Cir. 1978).
3. Although this is Plaintiff’s Second Amended Complaint, the first amendment was filed prior to service upon the Defendant.
4. No Rule 16 conference has been scheduled and no case management order has been entered to date.
5. Fed. R. Civ. P. 15(a)(2) provides that, “The court should freely give leave when justice so requires”.
6. Defendant Bank of Springfield will not be prejudiced by the Court’s grant of leave to file Plaintiff’s Second Amended Complaint.

WHEREFORE, Plaintiff NextGear Capital prays this Court make and enter its order granting Plaintiff leave to file its Second Amended Complaint and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

CARMODY MACDONALD P.C.

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Attorneys for Plaintiff NextGear Capital, Inc.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and complete copy of the foregoing was served on the 11<sup>th</sup> day of December 2018 via the Court's ECF system upon all counsel of record.

/s/ Spencer P. Desai